

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1445 Department of Agriculture and Consumer Services
SPONSOR(S): General Government Policy Council, Natural Resources Appropriations Committee, Agriculture and Natural Resources Policy Committee, Nelson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2348

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--------------------------------------------------|------------------|----------------|-----------------------|
| 1) | Agriculture & Natural Resources Policy Committee | 11 Y, 0 N, As CS | Kaiser | Reese |
| 2) | Natural Resources Appropriations Committee | 8 Y, 1 N, As CS | Bellflower | Dixon |
| 3) | General Government Policy Council | 12 Y, 2 N, As CS | Kaiser | Hamby |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

CS/CS/CS/HB 1445 addresses several issues related to agriculture and the powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- gives the Department of Environmental Protection (DEP) rule-making authority to update the Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes;
- requires local governments, in some areas, to meet certain criteria prior to adopting additional or more stringent standards relating to the model ordinance;
- allows on-line submission of certain applications to the department;
- requires a security officer school or recovery agent school to obtain the of the department’s Division of Licensing approval for use of a fictitious name;
- requires all 40 hours of training be completed prior to private investigator intern and security officer licensees submitting their applications;
- specifies the quantity of antifreeze to be submitted to the department for testing;
- authorizes the department to collect fees for the analysis and inspection of ethanol;
- removes language restricting the stop-sale order for brake fluid to be confined to the location where the violation occurred;
- transfers to the food banks and food recovery programs the responsibility to provide pertinent information to the department for dissemination to the public;
- provides for audits on marketing orders to be performed at the request of the advisory council associated with the marketing order;
- allows the inspection and registration of sites in the natural environment where aquatic plants are tended for harvest;
- increases the administrative fine cap for violations relating to plant industry;
- deletes language regarding the grading of poultry, which has not been used in 10 years;
- grants the department authority to delegate to local governments the issuance of authorizations for open burning;
- establishes a certified pile burner program within the department;
- amends the Florida Farm Winery program to recognize wine produced from agricultural products other than grapes;
- exempts tropical foliage from the provisions of the License and Bond law;
- clarifies that if a dealer in agricultural products fails, refuses or neglects to apply and qualify for a license renewal on or before its expiration date, a penalty shall apply;
- grants the department the authority to issue a stop-operation order for amusement rides;
- exempts contracts involving sellers of travel from the requirements of a written contract;
- revises the membership of the Florida Food Safety and Food Defense Advisory Council;
- authorizes the department and DEP to develop and implement a general permit for pesticide application;
- grants the department authority over the sale of commercial stock feed and commercial fertilizer in the state;
- requires a concealed firearm license applicant to submit fingerprints administered by the department; and,
- repeals language relating to the Florida Agricultural Museum as well as the Florida Agricultural Exposition from statute.

This bill has a positive fiscal impact on state revenues and an indeterminate fiscal impact on local government. The effective date of this legislation is July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Permit for Pesticide Application

In January 2009, the U.S. Sixth Circuit Court of Appeals (Cincinnati, Ohio) ruled that permits are required by the Clean Water Act for all biological, as well as chemical, pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the United States. The U.S. Environmental Protection Agency (EPA) was granted a stay of this decision that expires April 2011.

In February 2010, the U.S. Supreme Court declined to grant a rehearing of this decision. Certain delegated states that do not currently have a general permit in place are authorized to develop a general permit in coordination with the EPA. After April 2011, pesticide applications necessary for aquatic weed control, as well as mosquito control, will be required to have a National Pollutant Discharge Elimination System (NPDES) permit before pesticide application may be made. Failure to comply will result in a violation of the Clean Water Act. While the Department of Environmental Protection (DEP) has delegated authority from the EPA regarding oversight of the Clean Water Act, the Department of Agriculture and Consumer Services (department) is responsible for regulating pest control.

The bill provides for DEP, in consultation with the department and the Fish and Wildlife Conservation Commission (FWC), to develop and implement a general permit for pesticide application. The bill also provides for DEP to enter into memoranda of understanding (MOUs) with the department and the FWC regarding the uniform regulation of pesticides applied to the waters of the state. For pesticides that meet certain criteria¹, a temporary deviation from the acute toxicity provisions of DEP's water quality rule, within certain parameters, are allowed.

Florida Friendly Fertilizer

In 2009, the Legislature passed CS/CS/CS/SB 494, relating to water conservation. Among other things, the bill directed the Department of Environmental Protection (DEP) to adopt and enforce a Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes by January 15, 2010, for adoption by local governments, which may adopt the ordinance by October 1,

¹ Pesticides must be approved for a particular use by the EPA or the Department of Agriculture and Consumer Services, applied in accordance with registered label instructions and/or state standards for such application, accompanied by a permit or authorization required by s. 403.088(1), F.S. or by the Florida Pesticide Law, Part I of Chapter 487, F.S.

2010. The model ordinance assesses penalties on licensed contractors in violation of certain requirements, including the requirement to inspect automatic landscape irrigation systems and report systems not in compliance with statutory requirements. It allows for regular maintenance of broken systems without assessing penalties when fixed within a reasonable time. The funds raised through penalties are dispersed for water-conservation activities and for administration and enforcement activities.

CS/CS/CS/SB 494 also provided legislative findings regarding the beneficial effect of the implementation of the model ordinance and encouraged adoption by local governments. It dictated adoption by local governments that are located in an area where water is impaired by certain nutrients, and allowed local governments to adopt more stringent standards if specified criteria are met. Local governments that have adopted their own ordinance prior to January 1, 2009, are exempt from these provisions, as are farm operations.

The bill gives DEP rule-making authority to periodically update the model ordinance, and requires any amendment of the model ordinance, after July 1, 2010, to be adopted by order of DEP. The bill requires DEP to hold at least one public workshop prior to adoption of an amendment to the model ordinance. Interested stakeholders² must be notified of the public workshop.

The bill requires local governments located within an impaired watershed or water segment to adopt the most recent version of the model ordinance. Under certain circumstances, a local government may adopt more stringent standards than the model ordinance. An ordinance adopted by a local government does not prohibit a certified applicator³ from applying fertilizer during a specified period of the calendar year. However, a local government may require a certified applicator to perform a soil test or leaf tissue analysis during any specified period of the calendar year when the use of fertilizer is restricted or prohibited by local ordinances.

And lastly, the bill exempts lands currently used for scientific research on the effects of fertilizer on urban stormwater, water quality, agronomics or horticulture.

Division of Licensing

The Division of Licensing (division) oversees the regulation of private security, private investigative and recovery services, as well as the issuance of licenses to carry concealed weapons or concealed firearms. Current law is not clear regarding the management of a security agency by an actively employed law enforcement officer. The bill clarifies this provision stating that an actively employed law enforcement officer is not allowed to manage a security agency.

Current law⁴ requires applications for private security, private investigative and/or repossession services be submitted in writing. With the advent of Internet accessibility, the bill changes current law to accommodate the submission of applications on-line.

Current law does not provide the public with the ability to determine the owner of an entity. The bill requires a security officer school or recovery agent school to obtain the division's approval for use of a fictitious name. The bill also clarifies that an agency licensee structured as a sole proprietor or partnership may do business under one fictitious name. However, an agency licensee structured as a corporation or limited liability company (LLC) can conduct business under the corporate/LLC name or under one fictitious name per license.

Current law allows certain classes of private investigative and security officers to take their required educational training in two parts: 24 hours prior to application and 16 hours post application. It is difficult for the division to monitor the completion of the post application training. The bill requires

² Representatives of the nursery and landscape industry, the pest control industry, the Department of Agriculture and Consumer Services, the University of Florida's Institute of Food and Agricultural Sciences, environmental groups, and county and local governments.

³ Licensed under s. 482.1562, F.S. (Limited certification for urban landscape commercial fertilizer application)

⁴ Section 493.6105, F.S.

private investigative intern and security officer applicants to complete the entire 40 hours of training prior to submitting their application. The bill also clarifies that because bodyguard service is not investigative-related, it does not satisfy the experience requirement for persons applying for a private investigator intern license or security officers license.

Additionally, the bill updates Florida statutes to conform to federal laws and terminologies; provides flexibility in payment methods for fees; and corrects outdated references.

Antifreeze Act of 1978

The Antifreeze Act of 1978⁵ provides guidance to the Department of Agriculture and Consumer Services (department) regarding the regulation of antifreeze products in the state. Current law requires properly labeled samples of antifreeze to be furnished to the department for testing prior to the issuance of a permit. While specific sample amounts are required to perform the necessary testing, the amounts are not stipulated in statute. Therefore, some samples submitted are not adequate to perform the necessary tests, while other samples are too large, thus necessitating disposal of the excess antifreeze. The bill amends current law to specify a quantity to be submitted for testing.

Gasoline and Oil Inspection

Chapter 525, F.S., governs the regulation of gasoline and oil inspection in the state. In the recent past, ethanol has begun to be blended in 70-80 percent of all gasoline sold in Florida. And by December 31, 2010, all gasoline sold in Florida will be required to contain 9-10 percent ethanol. Additionally, the presence of E85 (85 percent ethanol and 15 percent gasoline) is gaining attention in Florida for use in Flex Fuel Vehicles. Although E85 does not have a large presence at this time, it is anticipated to increase in volume in the near future.

The department is given statutory authority⁶ to collect fees to defray the cost of inspecting and analyzing specified petroleum fuels. Even though the department is required to collect and analyze ethanol before it has been blended with gasoline, ethanol is currently not subject to the petroleum inspection fee. The bill includes ethanol in the list of petroleum fuels subject to the surcharge for inspection and testing.

Sale of Brake Fluid

Currently, the department may only issue a stop-sale order on brake fluid at the location where the violation occurred. If the violation deals with product quality, brake fluid from the same "lot" may be available for sale at other locations in the state. The bill removes language that restricts the stop-sale order to only the location where the violation occurred.

Sale of Liquefied Petroleum Gas (LP Gas)

Chapter 527, F.S., regulates the sale and use of LP gas in Florida. Currently, the statutes do not provide the department authority to issue stop-use, stop-operation, or stop-sale orders when a LP gas regulated entity fails to comply with the requirements of Chapter 527, F.S., or the rules promulgated under this section of law. While not all violations of the LP gas law meet the criteria⁷ for an immediate final order, the department currently lacks the authority to issue stop-operation orders when violations occur. The bill authorizes the department to issue stop-use, stop-operation, and stop-sale orders as warranted.

Food Recovery Programs

Florida law⁸ requires the department to develop a public information brochure detailing the need for and benefit of food recovery programs, the manner in which organizations may become involved in food recovery programs, the protection afforded to such programs under Florida law⁹, and the food recovery

⁵ Sections 501.91-501.923, F.S.

⁶ Section 525.09, F.S.

⁷ To issue an immediate final order, the department must find an immediate serious danger to public health, safety and welfare.

⁸ Section 570.0725, F.S.

⁹ Section 768.136, F.S.

programs or food banks that exist in the state. Current law also requires the brochure to be updated annually.

The department states that, as the law is currently written, production of an accurate publication is not feasible for the following reasons:

- The department does not have access to information regarding food recovery entities or food banks operating in the state unless they currently contract with the department.
- Theoretically, any food bank, food pantry, soup kitchen, shelter, etc., may accept recovered food. The statutes provide no definition for these entities.
- Sub-distributing entities, such as food banks, food pantries, soup kitchens, etc., may number in the thousands.

The bill makes the public dissemination of information on food banks and food recovery programs optional for the department. The bill also transfers the responsibility to the food banks and food recovery programs to provide pertinent information to the department for dissemination to the public. The department is given rule-making authority to implement the provisions of this legislation.

Plant Industry

In 2008, the department assumed responsibility for the regulation of aquatic plants, including harvesting, distribution and sale. The current definition of nursery excludes aquatic plants harvested from the natural environment. The bill removes the exemption of aquatic plants from the definition of nursery to allow for the identification, inspection and registration of sites in the natural environment where aquatic plants are tended for harvest. The department states that monitoring of these sites will ensure that over-collection does not occur or otherwise damage the ecosystem in which the aquatic plants thrive.

The law currently authorizes the department, after notice and hearing, to impose an administrative fine not exceeding \$5000 per violation relating to plant industry laws. This fine cap has not been raised in more than 30 years and is no longer commensurate with the damage that may result to agriculture or the environment. For example, a nursery that unlawfully sells nursery stock that is under quarantine for an exotic pest can result in a new pest species being introduced throughout the state, making eradication difficult and costly. With fines capped at \$5000 per infraction, the amount to be gained by the seller from selling a quarantined plant may far outweigh the monetary penalty. The bill increases the administrative fine cap to \$10,000 per violation.

Sale of Eggs and Poultry

State law¹⁰ provides for dressed or ready-to-cook poultry offered for sale in bulk in the state to be held in a container clearly labeled with the grade and the part name or whole-bird statement of such poultry. The grade may be expressed as “premium,” “good,” or “standard.” The grade may also be expressed in terms of equal standard as used in other states or by a federal agency. The United States Department of Agriculture (USDA) recently advised the department that current statutory language¹¹ violates the Poultry Products Inspection Act because it preempts federal law. The bill deletes language regarding the grading of poultry, which has not been used in 10 years.

Forest Protection

Currently, the Division of Forestry (division) does not have the statutory authority to delegate issuance of open burning authorizations to local governments, although many local governments have expressed an interest, and ability, to implement a burn authorization program with division guidance. Some counties issue permits under their own authority, but the division is required to come behind and re-issue daily authorization due to the lack of delegation authority.

The bill authorizes the delegation of authority to issue authorizations for open burning by the division to local governments. The local government’s program must be approved by the division, provide ordinance or local law that complies with state law, provide enforcement of the program’s requirements and provide financial, personnel and other resources needed to carry out the program. If the division

¹⁰ Section 583.13(1), F.S.

¹¹ Id.

determines that a local government's program does not comply with state law or corresponding rules, the division can require the local government to take corrective action within a reasonable timeframe. If the local government fails to comply within the allotted time, the division shall resume administration of the open burning authorization program from the local government. Local governments administering an open burning authorization program are responsible for cooperating and assisting the division in carrying out the division's powers, duties and functions. Violations of a local government's open burning authorization program are subject to penalties as provided in s. 590.14, F.S.

In November, 2006, the division implemented a Certified Pile Burner program (program). The bill codifies this program in statute. It provides definitions for "certified pile burner," "pile burning," "land-clearing operation" and "yard trash," as well as revises the definition of "extinguished." The bill requires the certified pile burner to ensure that:

- Prior to ignition, the piles are properly placed and the content is conducive to efficient burning.
- The piles are properly extinguished no later than 1 hour after sunset. In certain areas, the piles must be properly extinguished at least 1 hour before sunset.
- The specific consent of the landowner or his agent must be obtained before requesting authorization to burn.
- An authorization to burn has been obtained from the division prior to ignition.
- There are adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to control the fire.

If a burn is conducted in accordance with the provisions of the program, the property owner and his/her agent are not liable under applicable Florida law¹² for damage or injury caused by the fire or resulting smoke unless gross negligence is proven. Violations of program provisions are a misdemeanor of the second degree, punishable by imprisonment not exceeding 60 days or a \$500 fine. The division is given rule-making authority to implement the certified pile burning program.

The bill also delegates to the county tax collector the responsibility for sending notices of Wildfire Hazard Reduction Treatment to landowners in wildfire hazard areas.

The bill recognizes the violation of division rules as a criminal act. When the division sets burn restrictions by rule, nothing in the statutes allows enforcement of these rules. Therefore, there is no retribution for someone who chooses not to comply.

Florida Farm Winery Program

Currently, the Florida Farm Winery program is limited to those wineries that produce wine from grapes. Several Florida wine producers use fruits, other than grapes, and vegetables to make wine. However, these producers are not eligible to be registered and certified by the department as Florida Farm Wineries. The bill amends the Florida Farm Winery Program to recognize wine produced from products other than grapes.

Dealers in Agricultural Products

The Florida License and Bond Law (law)¹³ was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 legislative session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term "agricultural products" to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups

¹² Section 590.13, F.S.

¹³ Sections 604.15-604.34, F.S.

of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than \$1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry, and the industry has requested a reenactment of the exemption. This bill reverses the legislation enacted in 2005 and returns tropical foliage to exempted status from the provisions of the law.

The bill also amends current law to clarify that no person who has held a responsible position with a person, partnership, corporation or other business entity against whom the department has entered an administrative complaint, final order or whose license has been suspended or revoked for failure to comply with an order of the department may hold a responsible position with an agricultural dealer, licensed or otherwise, until the pending order has been satisfied. This is intended to close a loophole for individuals who register a corporation for the purchasing of agricultural products and then shut it down to avoid licensure or enforcement only to register a new corporation and continue operating without a license.

Safety Standards for Amusement Rides

Section 616.242, F.S., provides regulatory authority to the department for the safe operation of amusement rides in the state. Currently, the department does not have authority to issue a stop-operation order to an owner of an amusement ride that does not comply with the requirements of Chapter 616, F.S., or department rules. There are many potential violations of amusement ride laws that do not meet the criteria¹⁴ for issuance of an immediate final order. The bill grants the department the authority to issue a stop-operation order in instances where a violation occurs that does not rise to the level of an immediate serious danger.

Crop Insurance

Crop insurance is purchased by agricultural producers for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430). Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs regarding gross writing ratios.

The bill allows insurance companies, when calculating their gross writing ratio, to not include gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers. The bill requires liabilities for ceded reinsurance premiums payable to the FCIC and authorized reinsurers to be netted against the asset for amounts recoverable from reinsurers. Insurers who write other insurance products along with federal multi-peril crop insurance must disclose, either in the notes to the annual and quarterly financial statement or as a supplement to the financial statement, a breakout of the gross written premiums for federal multi-peril crop insurance.

Sellers of Travel

Section 686.201, F.S., requires the agreement between a principal and any sales representative paid on a commission basis to be subject to a written contract signed by both parties. If the contract is not in

¹⁴ To issue an immediate final order, the department must find an immediate serious danger to public health, safety and welfare.

writing and it is terminated, failure to pay the commission within 30 days makes the principal to an action liable for treble damages, attorney's fees and cost.

In the Florida travel industry, travel packages, cruise vacations, time share units, hotel rooms, etc., are routinely made available by providers, often via websites, to "sellers of travel" registered under Part XI of Chapter 550, F.S. The sellers of travel may then sell those services to the public. In such instances, the provider generally has no exclusive relationship with the seller of travel involved, so it is particularly burdensome and costly for a travel provider to enter into a separate written contract with every seller of travel who may decide to access the provider's travel offerings. Moreover, there is no real confusion in the travel industry regarding commissions and payment terms because such conditions are routinely published by travel providers and made available to all sellers of travel. As such, section 686.201, F.S., imposes what appear to be unnecessary costs on travel providers without conferring any real public benefit.

The bill exempts contracts involving sellers of travel from the requirements of a written contract.

Bestiality

According to the Humane Society of the United States (HSUS), animal sexual abuse, often referred to as bestiality, is the sexual molestation of an animal by a human. This type of animal abuse includes a wide range of behaviors that may result in killing or injuring an animal for sexual gratification.

Not all cases of animal sexual abuse involve physical injury to the animal, but sexual molestation of an animal by a human is classified as abuse. Psychologists have found that bestiality is harmful even in cases when physical harm to an animal does not occur.¹⁵

Research indicates a connection between animal sexual abuse and other types of violent crimes. Forty percent of the perpetrators of sexually motivated homicides who had been sexually abused as children also reported that they sexually abused animals.¹⁶

In 2007, a sexual behavior research project¹⁷ found that individuals who participated in sexually problematic behaviors such as bestiality, fetishism, voyeurism, having affairs, and using pornography had an elevated likelihood of starting to sexually abuse children. The study found bestiality as the strongest predictor of child sexual abuse. According to the study, the younger a person is when they begin having sex with animals, the greater the risk that they will start to sexually abuse children at a later point in time.

Generally, state laws prohibiting sexual activities involving animals are very old. Many of these laws have been repealed on the grounds that the wording is no longer relevant to society or understandable to the average citizen. A 1971 Florida Supreme Court decision¹⁸ invalidated the then-existing law¹⁹ covering bestiality on the grounds that its vagueness violated the state constitution. The statute, which was drafted in 1868, read as follows:

"Whoever commits the abominable and detestable crime against nature, either with mankind or with beast, shall be punished by imprisonment in the state prison not exceeding twenty years."

The court ruling stated that the language was vague, thus providing entrapment to unsuspecting citizens.

¹⁵ *Id.*

¹⁶ Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A. (1986). Murderers Who Rape and Mutilate. *Journal of Interpersonal Violence*, 1: 273-287.

¹⁷ Association for the Treatment of Sexual Abusers, 26th Annual Conference, San Diego, California; Sexual Behavior Predictors of Sexual Abuse of Children

¹⁸ 257 So. 2d 21; 1971 Fla. LEXIS 3074

¹⁹ s. 800.01, F.S.

As a result, current Florida law²⁰ does not specifically prohibit sexual activities involving animals and people. It only prohibits a person from intentionally committing an act to an animal that results in injury or excessive or repeated infliction of pain. Consequently, people who are caught in the act of sexual intercourse with an animal generally cannot be charged with or convicted of a sex-related crime. Such defendants must be charged with far less serious crimes like disorderly conduct or indecent exposure. Violations of this section are a felony of the third degree, punishable by a fine of not more than \$10,000 or 5 years in jail, or both.

The bill creates section 828.126, F.S., prohibiting persons from knowingly engaging in sexual conduct or sexual contact with an animal. A definition for "sexual activities" is provided in the bill.

The bill prohibits aiding or abetting another person in committing such acts, in permitting such acts to be conducted, and in organizing, promoting, or performing acts for commercial or recreational purposes. Violations of the provisions of this bill constitute a first degree misdemeanor punishable by a \$1,000 fine and up to one year in jail plus applicable administrative fees and court costs.

Animal husbandry²¹, conformation judging practices, or accepted veterinary medical practices are not subject to the provisions of the bill.

Miscellaneous

In several statutory cites, for which the department has oversight, the department is required to obtain social security numbers of the applicants. The bill deletes this requirement because social security numbers are no longer needed or used.

During the 2008 regular session, the Legislature removed all funding for the Florida Agricultural Museum due to a decrease in use and significant increases in the cost of operation. The bill repeals section 570.901, F.S., referencing the Florida Agricultural Museum, as well as other cross-references to the museum. Section 570.071, F.S., relating to the Florida Agricultural Exposition, is also being repealed from statute.

The bill also designates the Florida Agricultural Museum as the official state agricultural museum²².

The bill provides for audits on marketing orders to be performed at the request of the advisory council associated with the marketing order. Previously, an annual audit by a certified public accountant was required.

The bill requires a concealed firearm license applicant to submit fingerprints administered by the Division of Licensing.

The bill revises the membership of the Florida Food Safety and Food Defense Advisory Council to include members representing small farmers.

The bill grants the department the authority to enforce state laws relating to the sale of commercial stock feeds and commercial fertilizers.

The bill designates the animal disease laboratory complex in Osceola County as the Bronson Animal Disease Diagnostic Laboratory.

The bill also removes references to the Florida State Collection of Arthropods contract with the department as a direct service organization, which ended several years ago.

B. SECTION DIRECTORY:

²⁰ s. 828.12, F.S.

²¹ The agricultural practice of breeding and raising livestock

²² Section 15.0455, F.S.

Section 1: Amends s. 15.0455, F.S.; designates the Florida Agricultural Museum as the official state agricultural museum.

Section 2: Amends s. 369.20, F.S.: authorizes the Fish and Wildlife Conservation Commission (FWC) to enter into an agreement with the Department of Environmental Protection (DEP) for the uniform regulation of pesticides applied to the waters of the state.

Section 3: Amends s. 373.1391, F.S.; requires water management districts to give priority to the agricultural use of certain parcels for purposes of management of such parcels.

Section 4: Amends s. 403.088, F.S.; authorizes DEP to develop to develop a permit for pesticide application; allows DEP to enter into agreements with the Department of Agriculture and Consumer Services (department) and the FWC to ensure uniform regulation of pesticides applied to the waters of the state; and, authorizes temporary deviations from certain rule provisions under certain conditions.

Section 5: Amends s. 403.9336, F.S.; amends the legislative findings regarding the implementation of the Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes.

Section 6: Amends s. 403.9337, F.S.; revises edition of the model ordinance; requires counties to adopt most recent version of model ordinance; provides criteria to be included in the comprehensive program; requires the local government to convene a workgroup consisting of specific representatives; requires the local government to document the need for more stringent standards; requires the local government to address concerns relating to criteria for more stringent standards; and, exempts lands used for certain research from provisions regulating fertilizer use on urban landscapes.

Section 7: Amends s. 487.163, F.S.; authorizes the department to enter into an agreement with DEP to ensure the uniform regulation of pesticides applied to waters of the state.

Section 8: Amends s. 493.6102, F.S.; provides that certain provisions relating to security officers do not apply to certain officers performing off-duty activities.

Section 9: Amends s. 493.6105, F.S.; revises information to be included in an application for private investigators, private security officers and recovery agents.

Section 10: Amends s. 493.6106, F.S.; revises citizenship requirements and documentation for private investigators, private security officers and recovery agents; and, requires applicants to have the right to purchase or possess a firearm.

Section 11: Amends s. 493.6107, F.S.; revises methods by which fees may be paid.

Section 12: Amends s. 493.6108, F.S.; revises requirements for criminal history checks of license applicants whose fingerprints are not legible; and, requires investigation of the mental and emotional fitness of the applicants for firearms instructor licenses.

Section 13: Amends s. 493.6111, F.S.; requires security officer school or recovery agent school to obtain department approval for use of a fictitious name.

Section 14: Amends s. 493.6113, F.S.; revises application renewal procedures and requirements.

Section 15: Amends s. 493.6115, F.S.; conforms cross-references.

Section 16: Amends s. 493.6118, F.S.; revises grounds for disciplinary action.

Section 17: Amends s. 493.6121, F.S.; deletes provisions for department access to certain criminal history records provided to licensed gun dealers.

Section 18: Amends s. 493.6202, F.S.; revises methods by which fees may be paid.

Section 19: Amends s. 493.6203, F.S.; clarifies that bodyguard services do not count toward certain license requirements; and, revises training requirements for private investigator intern license applicants.

Section 20: Amends s. 493.6302, F.S.; revises methods by which fees may be paid.

Section 21: Amends s. 493.6303, F.S.; revises training requirements for security officer license applicants.

Section 22: Amends s. 493.6304, F.S.; revises application requirements and procedures for security school licenses.

Sections 23-25: Amends ss. 493.6401, 493.6402, and 493.6406, F.S.; revises out-dated terminology.

Section 26: Amends s. 500.033, F.S.; Amends the membership of the Florida Food Safety and Food Defense Advisory Council.

Sections 27-28: Amends ss. 501.605 and 501.607, F.S.; revises information to be included on license for commercial telephone seller.

Section 29: Amends s. 501.913, F.S.; revises size of antifreeze sample to be submitted to the department with application.

Section 30: Amends s. 525.01, F.S.; revises requirements for petroleum fuel affidavits.

Section 31: Amends s. 525.09, F.S.; imposes an inspection fee on certain alternative fuels containing alcohol.

Section 32: Amends s. 526.50, F.S.; provides definitions for “brand” and “formula.”

Section 33: Amends s. 526.51, F.S.; revises brake fluid permit application requirements.

Section 34: Amends s. 526.52, F.S.; revises information to be included on brake fluid labels.

Section 35: Amends s. 526.53, F.S.; revises criteria for issuing a stop-sale order.

Section 36: Amends s. 527.0201, F.S.; revises requirements for liquefied petroleum gas qualifying examinations; and, increases continuing education requirements for certain liquefied petroleum gas qualifiers.

Section 37: Amends s. 527.12, F.S.; authorizes the department to issue a stop-use order, stop-operation order or stop-sale order for violations relating to liquefied petroleum gas.

Sections 38-39: Amends ss. 559.805 and 559.928, F.S.; deletes requirements that lists of independent agents of sellers of business opportunities and the agents’ registration affidavits include the agents’ social security numbers.

Section 40: Amends s. 570.07, F.S.; revises the enforcement powers of the department to include the sale of commercial stock feed and commercial fertilizer.

Section 41: Amends s. 570.0725, F.S.; revises provisions for public information regarding food banks and food recovery programs; and, grants rule-making authority to the department.

Sections 42-43: Amends ss. 570.53 and 570.54, F.S.; conforms cross-references.

Section 44: Amends s. 570.55, F.S.; revises requirements for identifying sellers or handlers of tropical fruit or vegetables.

Section 45: Amends s. 570.902, F.S.; revises definitions.

Section 46: Amends s. 570.903, F.S.; deletes references to the Florida Agricultural Museum; and, deletes references to the Florida State Collection of Arthropods.

Section 47: Amends s. 573.118, F.S.; provides for an audit of marketing orders when requested by the advisory council; requires audit to be completed within a specified timeframe; and, requires a copy of the audit to be provided to the advisory council within a specified timeframe.

Section 48: Amends s. 581.011, F.S.; revises definitions.

Section 49: Amends s. 581.211, F.S.; increases penalty for violations of plant industry regulations.

Section 50: Amends s. 583.13, F.S.: deletes a prohibition on the sale of poultry without displaying the poultry grade.

Section 51: Amends s. 585.61, F.S.; designates the laboratory complex in Osceola County as the Bronson Animal Disease Diagnostic Laboratory.

Section 52: Amends s. 590.125, F.S.; revises definitions for pile burning authorizations; specifies purposes of certified prescribed burning; requires the authorization of the Division of Forestry (division) for certified pile burning; provides pile burning requirements; limits the liability of property owners or agents engaged in pile burning; provides for the certification of pile burners; provides penalties for violations by certified pile burners; requires rules; revises notice requirements for wildfire hazard reduction treatments; provides for approval of local government open burning authorization programs; provides program requirements; authorizes the division to close local government programs under certain circumstances; and, provides penalties for violations of local government open burning requirements.

Section 53: Amends s. 590.14, F.S.; authorizes fines for violations of any division rules; provides penalties for certain violations; and, provides legislative intent.

Section 54: Amends s. 599.004, F.S.; revises standards that a winery must meet to qualify as a certified Florida Farm Winery.

Section 55: Amends s. 604.15, F.S.; revises the term “agricultural products” to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products; and, defines the term “responsible position.”

Section 56: Amends s. 604.19, F.S.; revises requirements for late fees on agricultural products dealer applications.

Section 57: Amends s. 604.25, F.S.; prohibits certain persons from holding a responsible position with an agricultural products dealer; and, authorizes the suspension or revocation of an agricultural products dealer license for employing such a person.

Section 58: Amends s. 616.242, F.S.; authorizes the issuance of stop-operation orders for amusement rides under certain instances.

Section 59: Amends s. 624.4095, F.S.; requires that gross written premiums not be included when calculating the insurer’s gross ratio; requires liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; and, requires insurer writing other insurance products together with federal multi-peril crop insurance to disclose a breakout of the gross written premiums for multiple-peril crop insurance.

Section 60: Amends s. 686.201, F.S.; exempts contracts involving a seller of travel from the requirements of that section.

Section 61: Amends s. 790.06, F.S.; requires a concealed firearm license applicant to submit fingerprints administered by the Division of Licensing.

Section 62: Amends s. 828.126, F.S.; provides definitions; prohibits a person from knowingly engaging in sexual activities with an animal; prohibits certain acts related to sexual activities with animals; provides penalties; and, provides exemptions.

Section 63: Repeals ss. 570.071 and 570.901, F.S.; repeals language relating to the Florida Agricultural Exposition and Florida Agricultural Museum.

Section 64: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

| | (FY 10-11) Amount / FTE | (FY 11-12) Amount / FTE | (FY 12-13) Amount / FTE |
|------------------------------------|----------------------------|----------------------------|----------------------------|
| 1. Recurring | | | |
| Standards - GITF | | | |
| Section 25 – Alternative Fuels | \$1,066,000 | \$1,097,312 | \$1,122,550 |
| Marketing - GITF | | | |
| Section 47 – Tropical Foliage | (\$ 22,800) | (\$ 22,800) | (\$ 22,800) |
| Total Revenue by Fund: GITF | <u>\$ 1,055,050</u> | <u>\$ 1,086,362</u> | <u>\$ 1,111,600</u> |
| Grand Total – Revenue: | <u>\$ 1,055,050</u> | <u>\$ 1,086,362</u> | <u>\$ 1,111,600</u> |
| 2. Non-Recurring | NA | NA | NA |

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See the "Fiscal Comments" section below.

2. Expenditures:

See the "Fiscal Comments" section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Many Agricultural Dealers will see a reduction in the amount of bond required to obtain a license.

D. FISCAL COMMENTS:

The Department of Environmental Protection has indicated that this bill will require the department to adopt by rule the updated versions of the Model Ordinance for Florida-Friendly Use on Urban Landscapes. The Model Ordinance document was previously created and maintained through a collaborative effort including stakeholders, other state agencies, and the University of Florida's Institute of Food and Agriculture Sciences. Adoption by rule will use a significant amount of staff time that was not previously required.

Local governments would be required to convene a workgroup to conduct a review of more stringent non-point source nutrient pollution standards proposed by the local governments. Fiscal implications associated with the staff time and other costs necessary to hold a workgroup could be substantial; therefore, the fiscal impact to local governments is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Environmental Protection is given rule-making authority to update the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

The Department of Agriculture and Consumer Services is given rule-making authority to administer the public dissemination of information regarding food banks and food recovery services and to regulate certified pile burning.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On **April 9, 2010**, the General Government Policy Council adopted a strike-all amendment, as well as 2 amendments to the strike-all amendment, to CS/CS/HB 1445. **Amendment 1 to the Strike-All Amendment** provides authority to the Department of Agriculture and Consumer Services (department) to enforce state laws and rules relating to the sale of commercial stock feeds and commercial fertilizers. **Amendment 2 to the Strike-All Amendment** prohibits sexual conduct or contact, for the purpose of sexual gratification, with animals, as well as certain other acts related to the prohibited behavior. A violation of any of these provisions will result in a misdemeanor of the first degree. The **Strike-All Amendment**:

- Designates the Florida Agricultural Museum in Flagler County as the official state agricultural museum.

- Allows a local government to require a certified applicator²³ to perform certain analyses during specified times of the year when fertilizer use is restricted or prohibited.
- Revises the membership of the Florida Food Safety and Food Defense Advisory Council to include members representing small farmers.
- Designates the animal disease laboratory complex in Osceola County as the Bronson Animal Disease Diagnostic Laboratory.
- Allows multi-peril crop insurers to meet the statutorily required capital and surplus to do business in the state.
- Authorizes the department and the Department of Environmental Protection to develop and implement a general permit for pesticide application in, over, or near the waters of Florida.

On **March 26, 2010** the Natural Resources Appropriations Committee adopted three amendments and passed CS/CS HB 1445. **Amendment 1** prioritized the use of land that water management districts have leased to that of what was in place at the time of acquisition.

Amendment 2 directed the department to adopt the model fertilizer ordinance. It removed the requirement for the local government to convene a workgroup prior to adopting more stringent fertilizer standards. The amendment also provided protection for individuals licensed under Chapter 482, Florida Statutes.

Amendment 3 removed language from the bill relating to brake fluid registration fees.

On **March 17, 2010**, the Agriculture and Natural Resources Policy Committee amended and passed HB 1445 as a Committee Substitute (CS). The amendment removed language from the bill relating to minimum amounts for surety bonds or certificates of deposit required for agricultural products dealer licenses. The amendment inserted language into the bill authorizing the Department of Agriculture and Consumer Services to issue a stop-operation order for amusement rides.

²³ Per section 482.1562, F.S., certified for urban landscape commercial fertilizer application.